

STATE OF MICHIGAN
COURT OF APPEALS

TERRY B. ANGEL,

Plaintiff-Appellant/Cross-Appellee,

v

A1 SOUTH, L.L.C./GRAND RAPIDS
GRIFFINS/WAUSAU UNDERWRITERS
INSURANCE COMPANY,

Defendants-Appellees/Cross-
Appellants,

and

A1 SOUTH, L.L.C./GRAND RAPIDS
GRIFFINS/CITIZENS INSURANCE
COMPANY,

Defendants.

UNPUBLISHED
October 13, 2011

No. 295015
WCAC
LC No. 09-000070

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Plaintiff appeals the decision of the Worker's Compensation Appellate Commission (WCAC), which affirmed a magistrate's award of medical care benefits to plaintiff, but reversed an award of wage-loss benefits. This Court originally denied plaintiff's application for leave to appeal, but our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *Angel v A1 South/Grand Rapids Griffins*, 488 Mich 989; 791 NW2d 432 (2010). Defendants A1 South LLC/Grand Rapids Griffins and Wausau Underwriters Insurance Company (collectively "defendants") cross-appeal by delayed leave granted. We vacate and remand.

The opinion issued by the WCAC is authored by a single commissioner. The remaining two commissioners concurred in the result. Although all three commissioners signed an order, the order states that the magistrate's decision is "affirmed in part and reversed in part, according to the attached opinion."

Plaintiff argues on appeal that the WCAC's decision is unreviewable because it is not a true majority decision. He contends that because two of the commission members merely concurred in the result, the reasoning of a majority of the commission members is unknown. This presents a question of law, which is reviewed de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275; 753 NW2d 207 (2008).

This appeal is controlled by this Court's decision in *Findley v DaimlerChrysler Corp*, 289 Mich App 483; 797 NW2d 175 (2010), lv pending 488 Mich 1034 (2011). The rule established in *Findley* is that "[i]n order for a decision of the WCAC to be final and reviewable by this Court, it must be a true majority decision." *Id.* at 494. "[A] true majority decision is one in which at least a majority of the commissioners agree regarding the material facts and the ultimate outcome." *Id.* at 495. "A concurrence in result only is inadequate for appellate review, as it does not shed light on the factual findings and legal reasoning used by the majority in reaching its ultimate conclusion." *Id.* at 496.

In this case, the WCAC opinion that sets forth the material facts and legal bases for the matters decided was authored by one commissioner and the other two commissioners concurred in the result. A concurrence in result signifies agreement with the ultimate outcome (i.e., the result), but does not signify agreement with the facts or legal reasoning set forth in the lead commissioner's opinion. Thus, the WCAC did not provide a true majority decision in which the commissioners agreed regarding the material facts or legal bases for the matters decided. As in *Findley*, the facts and legal reasoning that led the majority of the commissioners to the result are unknown and therefore not reviewable. Where the WCAC does not provide a true majority decision, the remedy is to vacate the WCAC's decision and remand the case to the WCAC for it to make adequate findings of fact and explain its legal reasoning. *Id.* at 496-497. Accordingly, we vacate the WCAC's decision and remand for further proceedings.¹

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter

¹ In light of our conclusion, we need not address the remaining issues raised on appeal and on cross-appeal. However, we note that plaintiff also alleged that decisions of our Supreme Court were wrongly decided. "This Court is bound by the doctrine of stare decisis and is powerless to overturn a decision of the Supreme Court." *Ratliff v General Motors Corp*, 127 Mich App 410, 416-417; 339 NW2d 196 (1983). Therefore, plaintiff must direct any challenge to the Supreme Court.